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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/325,599	06/03/1999	SERGE DE GHELDERE	F8-5460	2998

7590 09/21/2004

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EXAMINER

CINTINS, IVARS C

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/325,599	<b>Applicant(s)</b> DE GHELDERE ET AL.	
	<b>Examiner</b> Ivars C. Cintins	<b>Art Unit</b> 1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 25-29, 31, 34 and 38-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-29, 31, 34 and 38-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1724

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-29, 31, 34 and 38-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 96/40857 in view of Herman et al. (U.S. Patent No. 6,190,855). WO 96/40857 discloses (see Figs. 20B and 20C; and page 15, lines 22-30) a fluid processing set for use in photoactivation treatment of a biological fluid, which processing set includes a plurality of containers connected together with openable flow paths. This reference further teaches that the first container is made of a material which is translucent to light in the photoactivating wavelength range (see page 84, lines 10-11); and also teaches providing an adsorbent material for removing excess photochemical agent and photoactivation by-products from the biological fluid (see page 84, lines 15-20). This reference also disclosed that the adsorbent could be housing in a separate treatment container (see page 75, lines 4-6) as required by claim 28, or within a semipermeable pouch in the storage container (see page 84, lines 3-4; and page 201, lines 12-14) as required by claim 29. This reference further teaches providing a holder (i.e. housing 100) for the disclosed containers (see Fig. 1; and page 115, line 12) as required by claims 40 and 41. This primary reference still further teaches connecting containers with plastic tubing containing frangible connectors (see page 78, lines 25-28), as now required by claims 42 and 43. Applicant should note that since all of the above noted components are assembled at some point in the primary reference system, these components are deemed to be "pre-assembled" as now required by the claims of this application. Accordingly, this primary reference discloses

Art Unit: 1724

the claimed invention with the exception of the light impermeable overwrap for the photochemical agent container. Herman et al. discloses a system for treating a biological fluid with a photoactive material, and further teaches enveloping a container of the photoactive material with a light impermeable overwrap (see col. 2, lines 45-52). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the system of the primary reference with the light impermeable overwrap of the secondary reference, in order to prevent photo-degradation of the photoactive material in this primary reference system.

Applicant's arguments filed June 21, 2004 have been noted and carefully considered but are not deemed to be persuasive of patentability. Applicant argues that WO 96/40857 does not expressly disclose a pre-assembled processing set because the containers in this reference system appear to be connected or joined sequentially as the process is carried out. It is pointed out, however, that since all of the recited containers will eventually be connected together in this reference system, i.e. prior to completion of the treatment process, at this point these containers will be "pre-assembled" as now required by the claims in this application.

Applicant also argues that the overwrap described in WO 96/40857 is for the removal device, not the container including the photochemical agent. Again, this argument has been noted and carefully considered, but no longer appears to be relevant in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (571) 272-1155. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If

Art Unit: 1724

attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr.

Duane Smith, can be reached at (571) 272-1166.

The centralized facsimile number for the USPTO is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Ivars C. Cintins**  
**Primary Examiner**  
**Art Unit 1724**

I. Cintins  
September 17, 2004